



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R04-OAR-2020-0299; FRL-10011-91-Region 4]

Georgia; Approval of State Plan for Designated Facilities and Pollutants;

Hospital/Medical/Infectious Waste Incineration (HMIWI) Units

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the Clean Air Act (CAA or the Act) section 111(d)/129 state plan submitted by the State of Georgia, through the Georgia Department of Natural Resources' Environmental Protection Division on August 1, 2018, and supplemented on January 7, 2019, for implementing and enforcing the Emission Guidelines (EG) and Compliance Schedules applicable to existing Hospital/Medical/Infectious Waste Incineration (HMIWI) units. The state plan provides for implementation and enforcement of the EG, as finalized by EPA on September 15, 1997, and revised on October 6, 2009, applicable to existing HMIWI units for which construction commenced on or before December 1, 2008, or for which modification commenced on or before April 6, 2010. The state plan establishes emission limits, as well as monitoring, operating, recordkeeping, and reporting requirements for affected HMIWI units.

DATES: Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. [EPA-R04-OAR-2020-0299] at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is

restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Mark Bloeth, Communities and Air Toxics Section, Air Analysis and Support Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303. Mr. Bloeth can be reached via telephone at 404-562-9013 and via email at bloeth.mark@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is proposing to approve Georgia's state plan for HMIWI facilities and designated pollutants developed under sections 111(d) and 129 of the Clean Air Act (CAA) submitted on August 1, 2018, with updates and revisions dated December 19, 2018, and submitted to EPA on January 7, 2019. Georgia's state plan submittal updates requirements for emission limits, waste management plans, training, compliance and performance testing, monitoring, and reporting and recordkeeping requirements that apply to existing HMIWI facilities.

Section 111(d) of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type and EPA has established emission guidelines for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources.

Section 129 of the CAA directs the Administrator to establish performance standards and EGs under section 111(d) of the Act limiting emissions of nine air pollutants (particulate matter, carbon monoxide, dioxins/furans, sulfur dioxide, nitrogen oxides, hydrogen chloride, lead, mercury, and cadmium) from four categories of solid waste incineration units: municipal solid waste; hospital/medical/infectious solid waste; commercial and industrial solid waste; and other solid waste.

Section 129 mandates that all plan requirements be at least as protective and restrictive as the promulgated EG. This includes fixed final compliance dates, fixed compliance schedules, and title V permitting requirements for all affected sources. Section 129 also requires that state plans be submitted to EPA within one year after EPA's promulgation of the EG and compliance times. Each state plan submittal must comply with the procedures for plan adoption and submittal codified at 40 CFR part 60, subpart B.

On September 15, 1997, EPA promulgated new source performance standards (NSPS) and EG to reduce air pollution from HMIWI units, which are codified at 40 CFR part 60, subparts Ec and Ce, respectively (See 65 FR 75338). A HMIWI unit as defined in 40 CFR 60.51c is any device that combusts any amount of hospital waste and/or medical/infectious waste.

On September 15, 1998, Georgia originally submitted a section 111(d) state plan for HMIWI which was approved by EPA on February 25, 2000. *See* 65 FR 10022. This 1998 submission implemented the 40 CFR Subpart Ce EG for existing HMIWI, which were promulgated through a September 15, 1997 rulemaking. *See* 62 FR 48348. The EG applied to existing HMIWI that commenced construction on or before June 20, 1996. Georgia has adopted the EG requirements into the Georgia Rule for Air Quality Control, Chapter 391-3-1-.02(2)(iii) – Hospital/Medical/Infectious Waste Incinerators and sections 2.117.2, 2.117.3, and 2.117.4 of the Georgia Department of Natural Resources' Procedures for Testing and Monitoring Sources of Air Pollutants ("PTM"). The most recent EG requirements incorporated in Georgia Rule for

Air Quality Control, Chapter 391-3-1-.02(2)(iii) became state effective on March 28, 2018. The same EG requirements incorporated in the PTM became state effective on February 1, 2018.

On October 6, 2009, in accordance with sections 111 and 129 of the Act, EPA promulgated revised HMIWI EG and compliance schedules for the control of emissions from HMIWI units. *See* 74 FR 51368. EPA codified these revised EG at 40 CFR part 60, subpart Ce. EPA amended the NSPS and EG on April 4, 2011 (76 FR 18407), and again on May 13, 2013 (78 FR 28051). Under section 129(b)(2) of the Act and the revised EG at subpart Ce, states with subject sources must submit to EPA plans that implement the revised EG.

On April 4, 2011 (76 FR 18407), and May 13, 2013 (78 FR 28051), EPA promulgated amendments to the Federal HMIWI guidelines that corrected errors made in calculating the emission standard for certain classes of HMIWI and pollutants, and eliminated the startup, shutdown, and malfunction exemption. GAEPD submitted an updated state plan on August 1, 2018 and submitted a supplement on January 7, 2019, to address the above revisions promulgated by EPA.

II. Review of Georgia's HMIWI State Plan Submittal

Georgia submitted a state plan to implement and enforce the EG for existing HMIWI units in the state¹ on August 1, 2018, with a supplemental submission to EPA on January 7, 2019. Georgia adopted the EG requirements into the Georgia Rule for Air Quality Control, Chapter 391-3-1-.02(2)(iii) – Hospital/Medical/Infectious Waste Incinerators, and sections 2.117.2, 2.117.3, and 2.117.4 of the Georgia Department of Natural Resources' PTM.

EPA has reviewed the revised plan for existing HMIWI units in the context of the requirements of 40 CFR part 60, subparts B and Ce. State plans must include the following nine essential elements: identification of legal authority; identification of mechanism for implementation; inventory of affected facilities; emissions inventory; emission limits;

¹ The submitted state plan does not apply in Indian country located in the state.

compliance schedules; testing, monitoring, recordkeeping, and reporting; public hearing records; and, annual state progress reports on plan enforcement. For the reasons explained below, EPA is proposing to approve GA's HMIWI state plan as consistent with those requirements.

A. Demonstration of Legal Authority

Under 40 CFR 60.26, an approvable state plan must demonstrate that the State has legal authority to adopt and implement the EG's emission standards and compliance schedule. In its submittal, Georgia cites the State Attorney General's opinion from November 1, 1993, and supplemental letter from November 10, 1994, demonstrating that Georgia's Environmental Protection Division has adequate authority to issue operating permits to all regulated sources for all regulated pollutants, including any pollutant regulated under sections 111, 112, and 129 standards.² Georgia also notes that it has amended Georgia Rule 391-3-1-.02(2)(iii) – Hospital/Medical/Infectious Waste Incinerators Constructed on or Before June 20, 1996 to implement and enforce its air quality program. EPA has reviewed the cited authorities and has preliminarily concluded that the State has adequately demonstrated legal authority to implement and enforce the HMIWI state plan in Georgia.

B. Identification of Enforceable State Mechanisms for Implementing the Plan

Under 40 CFR 60.24(a), a state plan must include emission standards, defined at 40 CFR 60.21(f) as “a legally enforceable regulation setting forth an allowable rate of emissions into the atmosphere, or prescribing equipment specifications for control of air pollution emissions.” Georgia has adopted enforceable emission standards for affected HMIWI units at Georgia Rule 391-3-1-.02(2)(iii) – Hospital/Medical/Infectious Waste Incinerators Constructed on or Before June 20, 1996, and sections 2.117.2, 2.117.3, and 2.117.4 of the Georgia Department of Natural

² This memorandum and supporting documentation are included in the docket.

Resources' PTM. EPA has preliminarily concluded that these provisions meets the emission standard requirement under 40 CFR 60.24(a).

C. Inventory of Affected Units

Under 40 CFR 60.25(a), a state plan must include a complete source inventory of all HMIWI units. Georgia has submitted an inventory of all affected units within the State. Omission from this inventory of HMIWI units does not exempt an affected facility from the applicable section 111(d)/129 requirements. EPA has preliminarily concluded that Georgia has met the affected unit inventory requirements under 40 CFR 60.25(a).

D. Inventory of Emissions from Affected HMIWI Units

Under 40 CFR 60.25(a), a state plan must include an emissions inventory of the pollutants regulated by the EG. Emissions from HMIWI units may contain cadmium, carbon monoxide, dioxins/furans, hydrogen chloride, lead, mercury, nitrogen oxides, particulate matter, and sulfur dioxide. Georgia submitted an emissions inventory for HMIWI units as part of its state plan. This emissions inventory contains HMIWI unit emissions rates for each regulated pollutant. EPA has preliminarily concluded that Georgia has met the emission inventory requirements of 40 CFR 60.25(a).

E. Emission Limitations, Operator Training and Qualification, and Waste Management Plan for HMIWI Units

Under 40 CFR 60.24(a) and (c), the state plan must include emission standards that are no less stringent than the EG. Georgia requires affected units to comply with the emission limits in 40 CFR part 60, subpart Ce at Rule 391-3-1-.02(2)(iii)4.(ii). As noted above, EPA has preliminarily concluded that Georgia's state plan includes enforceable emission limitations at Georgia Rule 391-3-1-.02(2)(iii) – Hospital/Medical/Infectious Waste Incinerators and sections 2.117.2, 2.117.3, and 2.117.4 of the Georgia Department of Natural Resources' PTM.

40 CFR 60.34e also requires a state plan to include operator training and qualification requirements that are at least as protective as the NSPS requirements at 40 CFR 60.53c. 40 CFR 60.35e requires a state plan to include waste management plan requirement that are at least as

protective as the NSPS requirements at 40 CFR 60.55c. Georgia's state plan incorporates the training and waste management requirements from the NSPS by reference into its state regulations at Rule 391-3-1-.02(2)(iii)4. Thus, EPA has preliminarily concluded that Georgia's state plan satisfies the requirements of 40 CFR 60.24(a), 60.24(c), 60.34e, and 60.35e.

F. Compliance Schedules

Under 40 CFR 60.24(a), (c), and (e), each state plan must include a compliance schedule, which requires affected HMIWI units to expeditiously comply with the state plan requirements. EPA has the authority to approve compliance schedule requirements that deviate from those imposed under the EG, so long as those are at least as protective as the EG. In its state plan submittal, Georgia notes that any affected source within the State was required—in the absence of an approved state plan—to comply with the Federal plan requirements no later than October 6, 2014. Because the affected sources are thus already in compliance with the EG requirements, Georgia has not included a compliance schedule in its state plan. In these circumstances, EPA has preliminarily concluded that Georgia's state plan satisfies the requirements of 40 CFR 60.24(a), (c), and (e).

G. Testing, Monitoring, Recordkeeping, and Reporting Requirements

Under 40 CFR 60.24(b)(2) and 60.25(b), an approvable state plan must require that sources conduct testing, monitoring, recordkeeping, and reporting. The EG further specifies that affected HMIWI units must comply with the following: the test methods and procedures at 40 CFR 60.37e(a) through (c); the monitoring requirements at 40 CFR 60.37e(d); and, the recordkeeping and reporting requirements at 40 CFR 60.38e.

Georgia's state plan codifies relevant requirements in section 2.117 of the PTM. Specifically, the PTM specifies applicable: performance testing requirements at section 2.117.2; monitoring requirements at section 2.117.3; and, recordkeeping and reporting requirements at section 2.117.4. EPA has reviewed these provisions and has preliminarily concluded they are at least as stringent as the EG's testing, monitoring, recordkeeping, and

reporting requirements. Accordingly, EPA has preliminarily concluded that Georgia's HMIWI plan satisfies the requirements of 40 CFR 60.24(b)(2) and 60.25(b).

H. A Record of Public Hearing on the State Plan Revision

40 CFR 60.23 sets forth the public participation requirements for each state plan. The State must conduct a public hearing; make all relevant plan materials available to the public prior to the hearing; and, provide notice of such hearing to the public, the Administrator of EPA, each local air pollution control agency, and, in the case of an interstate region, each state within the region. 40 CFR 60.23(f)(1) requires each state plan include certification that the hearing was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission.

As part of its state plan submittal, Georgia provided a notice of the state plan revisions that was submitted to all required parties on August 1, 2018. In addition, on January 7, 2019, Georgia submitted a certification dated December 6, 2018 for a public hearing on the state plan, which was held September 6, 2018. In this proposed action, EPA has preliminarily concluded that these materials satisfy the public participation requirements at 40 CFR 60.23.

I. Annual State Progress Reports to EPA

Under 40 CFR 60.25(e) and (f), the State must provide in its state plan for annual reports to EPA on progress in enforcement of the plan. Accordingly, Georgia provides in its plan that it will submit reports on progress in plan enforcement to EPA on an annual (calendar year) basis, commencing with the first full reporting period after EPA's state plan approval. EPA has preliminarily concluded that Georgia's HMIWI plan satisfies the requirements of 40 CFR 60.25(e) and (f).

III. Incorporation by Reference

In this action, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is

proposing to incorporate by reference Georgia Rule 391-3-1-.02(2)(iii), “Hospital/Infectious Waste Incinerators Constructed on or Before June 20, 1996,” state effective July 23, 2018. This state rule was amended to make it current with the newly updated HMIWI emissions guidelines as well as include the following additional changes: an updated definition of a HMIWI unit to include units that commenced construction on or before December 1, 2008 or that were modified on or before April 6, 2010; additional testing and compliance requirements for NO_x and SO₂; more stringent emissions limits for facilities built after June 20, 1996 but no later than December 1, 2008; and a state rule name change to reflect the aforementioned amendments.

EPA is also proposing to incorporate by reference Georgia Procedures for Testing and Monitoring (PTM) Sources of Air Pollutants section 2.117, state effective July 23, 2018. Georgia’s state rule adopts the HMIWI EG by reference, with the exception of some requirements primarily related to operating limits, performance testing, monitoring, demonstration of initial and continuous compliance, and reporting and recordkeeping. These excepted requirements are being addressed by revisions to Georgia’s PTM Sources of Air Pollutants in the following sections: performance testing and compliance requirements in Section 2.117.2, monitoring requirements in Section 2.117.3, and reporting and recordkeeping requirements in Section 2.117.4 of Georgia’s PTM. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Proposed Action

Pursuant to CAA section 111(d), CAA section 129, and 40 CFR part 60, subparts B and Ce, EPA is proposing to approve Georgia’s state plan for regulation of HMIWI units as submitted on August 1, 2018 and supplemented on January 7, 2019. In addition, EPA is

proposing to amend 40 CFR part 62, subpart L – Georgia – Air Emissions From Hospital/Medical/Infectious Waste Incinerators to reflect this proposed action.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a 111(d)/129 plan submission that complies with the provisions of the CAA and applicable Federal regulations. In reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided they meet the criteria and objectives of the CAA and EPA's implementing regulations. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001).

In addition, this rulemaking is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA. It also does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). And it does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because EPA is not proposing to approve the submitted plan to apply in Indian country located in the state, and because the submitted plan will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Administrative practice and procedure, Hospital, medical, and infectious waste incineration units, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Authority: 42 U.S.C. 7411

Dated: March 16, 2021.

John Blevins

Acting Regional Administrator,

Region 4.

